

Tanya E. Moore, SBN 206683
MOORE LAW FIRM, P.C.
300 South First Street Ste. 342
San Jose, California 95113
Telephone (408) 298-2000
Facsimile (408) 298-6046
E-mail: service@moorelawfirm.com
tanya@moorelawfirm.com

Attorney for Plaintiff
Gerardo Hernandez

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GERARDO HERNANDEZ,) No.
)
Plaintiff,) COMPLAINT ASSERTING DENIAL OF
) RIGHT OF ACCESS UNDER THE
vs.) AMERICANS WITH DISABILITIES ACT
) FOR INJUNCTIVE RELIEF,
L&S ENERGY, INC.; JOHN J. JAHAN,) DECLARATORY RELIEF, DAMAGES,
Trustee of THE JAHAN FAMILY TRUST) ATTORNEYS' FEES AND COSTS (ADA
Dated 06.11.2007; SHARAREH Z. JAHAN,)
Trustee of THE JAHAN FAMILY TRUST)
Dated 06.11.2007;)
)
Defendants.)
)
)
)

I. SUMMARY

1. This is a civil rights action by plaintiff GERARDO HERNANDEZ ("Plaintiff") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

Chevron
288 East Virginia Street
San Jose, California 95112
(hereafter "the Facility")

2. Plaintiff seeks damages, injunctive and declaratory relief, attorney fees and costs, against L&S ENERGY, INC.; JOHN J. JAHAN, Trustee of THE JAHAN FAMILY

1 TRUST Dated 06.11.2007; and SHARAREH Z. JAHAN, Trustee of THE JAHAN FAMILY
2 TRUST Dated 06.11.2007 (hereinafter collectively referred to as “Defendants”), pursuant to
3 Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.) (“ADA”)
4 and related California statutes.

5 **II. JURISDICTION**

6 3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA
7 claims.

8 4. Supplemental jurisdiction for claims brought under parallel California law –
9 arising from the same nucleus of operative facts – is predicated on 28 U.S.C. § 1367.

10 5. Plaintiff’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

11 **III. VENUE**

12 6. All actions complained of herein take place within the jurisdiction of the United
13 States District Court, Northern District of California, and venue is invoked pursuant to 28
14 U.S.C. § 1391(b), (c).

15 **IV. PARTIES**

16 7. Defendants own, operate, and/or lease the Facility, and consist of a person (or
17 persons), firm, and/or corporation.

18 8. Plaintiff is substantially limited in his ability to walk, and must use a wheelchair
19 for mobility. Consequently, Plaintiff is “physically disabled,” as defined by all applicable
20 California and United States laws, and a member of the public whose rights are protected by
21 these laws.

22 **V. FACTS**

23 9. The Facility is a gas station that is open to the public, intended for non-
24 residential use, and its operation affects commerce. The Facility is therefore a public
25 accommodation as defined by applicable state and federal laws.

26 10. Plaintiff lives less than twenty miles from the Facility and, as a delivery driver
27 who uses his own vehicle for work, he drives in the area where the Facility is located
28 frequently and often needs to purchase gas. He visited the Facility on or about April 13, 2023

1 to fuel his vehicle and buy snacks. During his visit to the Facility, Plaintiff personally
2 encountered barriers (both physical and intangible) that interfered with, if not outright denied,
3 Plaintiff's ability to use and enjoy the goods, services, privileges and accommodations offered
4 at the Facility. These barriers include, but are not necessarily limited to, the following:

5 a) There is no properly configured and identified accessible parking in the
6 Facility's parking lot. Plaintiff wanted to park in a parking stall so that
7 he could take his time while going into the store to purchase snacks.
8 Upon arrival, Plaintiff was unable to locate any designated accessible
9 parking and had to leave his vehicle at the fuel pump while he went into
10 the store. When he was leaving, he realized that there was what appeared
11 to be a designated accessible parking stall in the corner of the lot, but it
12 lacked signage and a visible access aisle. Plaintiff also observed that the
13 designated accessible parking was not connected to the store entrance
14 via an accessible route. The lack of access aisle and accessible route
15 would have made it difficult for Plaintiff to use the designated accessible
16 parking stall, even if he had been able to find it.

17 b) There is no accessible route from the fuel pumps to the Facility entrance.
18 From the fuel pump where Plaintiff had to leave his vehicle, he could
19 not find an accessible route to reach the store entrance. It was difficult
20 for him to navigate around vehicles that were parked at the pumps and in
21 front of the store, while also trying to avoid the large cracks and
22 potholes that were on the surface of the route. Plaintiff is deterred from
23 returning to the Facility at night, because he knows that the lighting
24 conditions would make it dangerous for him to try to wheel over the
25 uneven surface as a sudden change in level can tip his wheelchair over.
26 Additionally, the curb ramp was built-up and projected into the
27 vehicular way, and the ramp's bottom landing was obstructed by a
28 vehicle in a parking stall, making the ramp hard for Plaintiff to use.

1 11. There may exist other barriers at the Facility which relate to Plaintiff's
2 disabilities, and he will seek to amend this Complaint once such additional barriers are
3 identified as it is Plaintiff's intention to have all barriers which exist at the Facility and relate to
4 his disabilities removed to afford him full and equal access.

5 12. Plaintiff was, and continues to be, deterred from visiting the Facility because
6 Plaintiff knows that the Facility's goods, services, facilities, privileges, advantages, and
7 accommodations were and are unavailable to Plaintiff due to Plaintiff's physical disabilities.
8 Plaintiff enjoys the goods and services offered at the Facility, and will return to the Facility
9 once the barriers are removed.

10 13. Defendants knew, or should have known, that these elements and areas of the
11 Facility were inaccessible, violate state and federal law, and interfere with (or deny) access to
12 the physically disabled. Moreover, Defendants have the financial resources to remove these
13 barriers from the Facility (without much difficulty or expense), and make the Facility
14 accessible to the physically disabled. To date, however, Defendants refuse to either remove
15 those barriers or seek an unreasonable hardship exemption to excuse non-compliance.

16 14. At all relevant times, Defendants have possessed and enjoyed sufficient control
17 and authority to modify the Facility to remove impediments to wheelchair access and to
18 comply with the 1991 ADA Accessibility Guidelines and/or the 2010 ADA Standards for
19 Accessible Design. Defendants have not removed such impediments and have not modified the
20 Facility to conform to accessibility standards. Defendants have intentionally maintained the
21 Facility in its current condition and have intentionally refrained from altering the Facility so
22 that it complies with the accessibility standards.

23 15. Plaintiff further alleges that the (continued) presence of barriers at the Facility is
24 so obvious as to establish Defendants' discriminatory intent. On information and belief,
25 Plaintiff avers that evidence of this discriminatory intent includes Defendants' refusal to adhere
26 to relevant building standards; disregard for the building plans and permits issued for the
27 Facility; conscientious decision to maintain the architectural layout (as it currently exists) at the
28 Facility; decision not to remove barriers from the Facility; and allowance that Defendants'

property continues to exist in its non-compliant state. Plaintiff further alleges, on information and belief, that the Facility is not in the midst of a remodel, and that the barriers present at the Facility are not isolated or temporary interruptions in access due to maintenance or repairs.

VI. FIRST CLAIM

Americans with Disabilities Act of 1990

Denial of “Full and Equal” Enjoyment and Use

16. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

17. Title III of the ADA holds as a “general rule” that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

18. Defendants discriminated against Plaintiff by denying Plaintiff “full and equal enjoyment” and use of the goods, services, facilities, privileges and accommodations of the Facility during each visit and each incident of deterrence.

Failure to Remove Architectural Barriers in an Existing Facility

19. The ADA specifically prohibits failing to remove architectural barriers, which are structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).

20. When an entity can demonstrate that removal of a barrier is not readily achievable, a failure to make goods, services, facilities, or accommodations available through alternative methods is also specifically prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

21. Here, Plaintiff alleges that Defendants can easily remove the architectural barriers at the Facility without much difficulty or expense, that the cost of removing the architectural barriers does not exceed the benefits under the particular circumstances, and that Defendants violated the ADA by failing to remove those barriers, when it was readily achievable to do so.

22. In the alternative, if it was not “readily achievable” for Defendants to remove the Facility’s barriers, then Defendants violated the ADA by failing to make the required services available through alternative methods, which are readily achievable.

Failure to Design and Construct an Accessible Facility

23. Plaintiff alleges on information and belief that the Facility was designed and constructed (or both) after January 26, 1993 – independently triggering access requirements under Title III of the ADA.

24. The ADA also prohibits designing and constructing facilities for first occupancy after January 26, 1993, that aren’t readily accessible to, and usable by, individuals with disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

25. Here, Defendants violated the ADA by designing and constructing (or both) the Facility in a manner that was not readily accessible to the physically disabled public – including Plaintiff – when it was structurally practical to do so.¹

Failure to Make an Altered Facility Accessible

26. Plaintiff alleges on information and belief that the Facility was modified after January 26, 1993, independently triggering access requirements under the ADA.

27. The ADA also requires that facilities altered in a manner that affects (or could affect) its usability must be made readily accessible to individuals with disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility’s primary function also requires making the paths of travel, bathrooms, telephones, and drinking fountains serving that area accessible to the maximum extent feasible. *Id.*

28. Here, Defendants altered the Facility in a manner that violated the ADA and was not readily accessible to the physically disabled public – including Plaintiff – to the maximum extent feasible.

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¹ Nothing within this Complaint should be construed as an allegation that Plaintiff is bringing this action as a private attorney general under either state or federal statutes.

Failure to Modify Existing Policies and Procedures

29. The ADA also requires reasonable modifications in policies, practices, or procedures, when necessary to afford such goods, services, facilities, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

30. Here, Defendants violated the ADA by failing to make reasonable modifications in policies, practices, or procedures at the Facility, when these modifications were necessary to afford (and would not fundamentally alter the nature of) these goods, services, facilities, or accommodations.

Failure to Maintain Accessible Features

31. Defendants additionally violated the ADA by failing to maintain in operable working condition those features of the Facility that are required to be readily accessible to and usable by persons with disabilities.

32. Such failure by Defendants to maintain the Facility in an accessible condition was not an isolated or temporary interruption in service or access due to maintenance or repairs.

33. Plaintiff seeks all relief available under the ADA (i.e., injunctive relief, attorney fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

34. Plaintiff seeks a finding from this Court (i.e., declaratory relief) that Defendants violated the ADA in order to pursue damages under California's Unruh Civil Rights Act.

VII. SECOND CLAIM

Unruh Act

35. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

36. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

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47. Defendants' non-compliance with these requirements at the Facility aggrieved (or potentially aggrieved) Plaintiff and other persons with physical disabilities. Accordingly, Plaintiff seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Statutory minimum damages under section 52(a) of the California Civil Code according to proof.
3. Declaratory relief finding that Defendants violated the ADA for the purposes of Unruh Act damages.
4. Attorneys' fees, litigation expenses, and costs of suit.²
5. Interest at the legal rate from the date of the filing of this action.
6. For such other and further relief as the Court deems proper.

Dated: 5/13/2023

MOORE LAW FIRM, P.C.

/s/ Tanya E. Moore

Tanya E. Moore
Attorney for Plaintiff
Gerardo Hernandez

² This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

VERIFICATION

I, GERARDO HERNANDEZ, am the plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

Dated: 5/13/2023

/s/ Gerardo Hernandez

Gerardo Hernandez

I attest that the original signature of the person whose electronic signature is shown above is maintained by me, and that his concurrence in the filing of this document and attribution of his signature was obtained.

/s/ Tanya E. Moore

Tanya E. Moore

Attorney for Plaintiff,

GERARDO HERNANDEZ